
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

HEYMAN HAROLD GUILLORY,

Petitioner,

versus

DIRECTOR, TDCJ-ID,

Respondent.

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CIVIL ACTION NO. 1:14-CV-669

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Heyman Harold Guillory, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner is incarcerated pursuant to a conviction for capital murder.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, for consideration. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the petition be denied.

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. The parties filed objections to the Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. After careful consideration, the court is of the opinion the objections are without merit. Petitioner complains he has been improperly denied relief in several proceedings seeking DNA testing pursuant to Article 64.01 of the Texas Code of Criminal Procedure. Despite petitioner's objections, the magistrate judge correctly concluded petitioner's claim does not

provide a basis for federal habeas relief. The respondent complains that the magistrate judge did not consider the argument that the petition should be dismissed as successive. However, as the magistrate judge correctly concluded the petition did not state a basis for federal habeas relief, there was no need to also consider the argument that the petition was successive.

ORDER

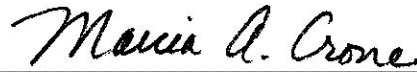
Accordingly, the objections filed by the parties are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered denying the petition.

In addition, the court is of the opinion petitioner is not entitled to a certificate of appealability. An appeal from a final judgment denying habeas relief may not proceed without such a certificate. *See* 28 U.S.C. § 2253. To be entitled to a certificate of appealability, the petitioner must make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). To make a substantial showing, the petitioner need not establish he would prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir. 2000).

In this case, the petitioner has not shown that the issues raised are subject to debate among jurists of reason. The factual and legal questions raised by petitioner have been consistently

resolved adversely to his position and the questions presented are not worthy of encouragement to proceed further. As a result, a certificate of appealability shall not issue in this matter.

SIGNED at Beaumont, Texas, this 11th day of May, 2017.

A handwritten signature in black ink, reading "Marcia A. Crone". The signature is written in a cursive style with a horizontal line underneath it.

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE